Due service and receipt of a copy of the within is hereby admitted

this.....*day of August, 1929.*

.....

Attorney General,

.....

Deputy Attorney General,
Solicitors for Appellees.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

NOV 26 19
CHARLES ELMORE C
CL

No. 267

GEO. T. COTTINGHAM and WILLIAM C. MEGINNES, et al.,
Appellants,

vs.

FRANK G. SNOOK, et al.,
Appellees.

Consolidated for hearing as one case with No. 86

CARLEY & HAMILTON, INC., et al.,
Appellants,

vs.

FRANK G. SNOOK,
Appellee.

BRIEF FOR APPELLANTS IN No. 267.

W. R. CRAWFORD,
310 Call Building, San Francisco,

J. F. VIZZARD,
310 Call Building, San Francisco,

HENRY G. HOTCHKISS,
20 Pine Street, New York City.
Solicitors for Appellants.

Parker Printing Company, 523 Clay Street, San Francisco

Subject Index.

Page

STATEMENT 1

SPECIFICATION OF ERRORS 13

ARGUMENT 19

I. The appellants instituted the action on behalf of themselves and on behalf of others similarly interested or situated. A class suit 19

II. The charges to be collected in advance by the Appellee under the provisions of subdivision (c) of Section 77 of the "California Vehicle Act", as amended, are "tolls" 20

III. The said subdivision (c) of said Section 77 of the "California Vehicle Act", as amended, is a revenue measure and was not enacted as a police measure 20

IV. All cities are empowered by the State Constitution and have enacted license ordinances compelling owners or operators of motor vehicles used in transporting passengers for hire or property to pay in advance license fees before using the streets thereof. The charges are "tolls"..... 20

V. The said subdivision (c) of Section 77 of said "California Vehicle Act", as amended, compelling the appellants and all persons, firms, associations and corporations similarly interested or situated to pay said charges are unconstitutional and void, being contrary to and in violation of the Fourteenth Amendment of the Federal Constitution.... 21

VI. The said provisions of subdivision (c) of said Section 77 of the "California Vehicle Act" are contrary to and in violation of the Constitution of California 26

Page

VII. The meaning of the term "Free from tolls" has been determined by the judicial decisions and acts of Congress before the enactment of the Rural Post Road Act of 1916 27

VIII. The said provisions of subdivision (c) of the "California Vehicle Act" are unconstitutional being contrary to and in violation of the Federal Aid Legislation so adopted by the State of California 34

IX. The said Acts and threatened Acts of said Appellee Snook, in enforcing subdivision (c) are illegal and void, as said subdivision is unconstitutional..... 47

X. The Acts and threatened Acts of Appellee Riley under color of his office, in distributing the moneys collected under the said subdivision (c) are illegal and void, as said subdivision is unconstitutional.. 48

XI. The Acts and threatened Acts of said Appellees in enforcing said unconstitutional and void subdivisions are illegal, being contrary to and in violation of the Constitution of the United States, especially the 14th Amendment thereof, and also the Constitution of California 49

XII. The appellants and all others similarly interested or situated are entitled to a permanent injunction against the enforcement of the provisions of subdivision (c) and proper relief in the premises..... 49

Authorities Cited

	Page
Askren v. Continental Oil Co., 252 U. S. 444, 64 L. Ed. 654	44
Achison v. Huddleson, 12 How. 294, 13 L. Ed. 993	28
Barrett v. New York, 232 U. S. 30, 58 L. Ed. 483	45
B. & O. R. R. Co. v. Maryland, 21 Wall. 456, 22 L. Ed. 678	35
Boyle v. P. & R. R. Co., 54 Pa. St. 310	34
Bowman v. Continental Oil Co., 256 U. S. 642, 65 L. Ed. 1139	44
Crutcher v. Kentucky, 141 U. S. 47, 35 L. Ed. 649	45
Florida v. Mellon, 273 U. S. 12, 71 L. Ed. 525	42
Grand Trunk Western Railway Co. v. U. S., 252 U. S. 312, 64 L. Ed. 484	46
Lake Superior etc. R. R. Co. v. U. S., 3 Otto 442, 23 L. Ed. 965	28
Leloupe v. Mobile, 123 U. S. 64, 32 L. Ed. 311	45
Mason v. U. S., 260 U. S. 545, 67 L. Ed. 396	39
Neil, Moore & Co. v. Ohio, 3 How. 721, 11 L. Ed. 800	30
Ouachita, etc. Packet Co. v. Aiken, 221 U. S. 444, 30 L. Ed. 976	36
Perrine v. Chesapeake & Del. Canal Co., 9 How. 172, 13 L. Ed. 92	37
Post Teleg.-Cable Co. v. Richmond, 249 U. S. 252, 63 L. Ed. 590	45
Searight v. Stokes, et al., 3 How. 151, 11 L. Ed. 535	30
Sprout v. South Bend, 277 U. S. 163, 72 L. Ed. 529	24
U. S. v. California & Oregon Road Co., 148 U. S. 31, 37 L. Ed. 354	30

Page

U. S. v. Dalles Military Road Co., 140 U. S. 599, 35 L. Ed. 561 30
U. S. v. Michigan, 190 U. S. 379, 47 L. Ed. 103 34

ACTS OF CONGRESS AND STATE LAWS.

Acts of Congress regarding "tolls" on Navigable Waters 31, 32
Act of Congress of July 2nd, 1918 39
"Federal Highway Act" 40
"Rural Post Road Act" 37

State Act adopting Federal Aid Legislation 39
State "California Vehicle Act" 34
Subdivision (c) of Sec. 77 as amended 20, 21
Subdivision (c) of Sec. 77 before amended 22

Opinion of Statutory Court (not reported) 27

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

No. 267

GEO. T. COTTINGHAM and WILLIAM C. MEGINNES, et al.,
Appellants,
vs.
FRANK G. SNOOK, et al.,
Appellees.

Consolidated for hearing as one case with No. 86

CARLEY & HAMILTON, INC., et al.,
Appellants,
vs.
FRANK G. SNOOK,
Appellee.

BRIEF FOR APPELLANTS IN No. 267.

STATEMENT.

The plaintiffs (now appellants) instituted this case in the United States District Court of the Northern District

of California, Southern Division, on behalf of themselves and on behalf of all persons, firms, associations and corporations similarly interested or situated (R. 1). The plaintiffs, Cottingham and Meginnes and San Jose Transfer & Storage Company, Inc., have been and are now carrying on the business of transporting property on motor vehicles, trailers and semi-trailers using the highways outside of the limits of cities, as well as the streets of said cities; Cottingham and Meginnes have paid in advance this year $322.00 under subdivision (c) of Section 77 to the defendant Snook; their business amounts to more than $20,000 yearly. The plaintiff, San Jose Transfer & Storage Company, Inc., is in the business of transporting property in its motor vehicles using the highways outside of the City and using the streets of the City; its business amounts to more than $50,000 yearly; it has paid in advance this year $505.00 under said subdivision (c). The plaintiff, Union Ice Company, a corporation, is carrying on its business in many of the cities of California and transports many of its products by motor vehicle using the streets of many cities and also the highways outside of said cities; its business amounts to more than $1,000,000 yearly; it has paid in advance this year more than $15,000 under said subdivision (c). All of said plaintiffs will be compelled to pay additional charges under said subdivision (c) to the said Snook, as they are compelled to put into service additional motor vehicles, trailers, and semi-trailers in order to carry on their respective businesses, or they will be irreparably damaged and their respective businesses will be destroyed (R. 1, 2).

The defendant (now appellee) Frank G. Snook, as Chief of the Division of Motor Vehicles, is now and has been for some years last past in exclusive charge of the enforcement of the provisions of the "California Vehicle Act", including subdivision (c) of Section 77 thereof. The defendant (now appellee) Ray L. Riley has been for years and now is the State Controller of the State and is vested with exclusive power to issue warrants on the Motor Vehicle Fund as provided for in said "California Vehicle Act" (R. 2, 3).

The "California Vehicle Act", being Chapter 226, St. of 1923, as amended by Chap. 240, St. of 1925, and by Chap. 752, Chaps. 844 and 864, Stat. of 1927, provides, among other things, that no motor vehicle, trailer or semi-trailer can be used upon the highways until they have paid the exactions under subdivisions (a) and (b), or (a) and (c) of Section 77; the defendant Snook must receive the correct fees in advance, as aforesaid; any person operating said vehicles upon the public highways before he has paid the said fee shall be guilty of a misdemeanor; every person operating unlawfully is punished by a fine not to exceed $500.00 or imprisoned in the county jail for not to exceed six months, or by both fine and imprisonment, moreover said fee and penalty constitute a lien upon the vehicle and it is the duty of the defendant to collect said fee and penalty by seizure and sale of such vehicle; counties and cities are given the power to license for revenue and regulation vehicles transporting passengers for hire and transporting property; a Motor Vehicle Fund was created and all the collections from said subdi-

visions (a), (b) and (c) of said Section 77 are deposited in said Fund; not more than 25% so collected shall be expended for the enforcement of the provisions of the "California Vehicle Act"; the defendant Ray L. Riley has exclusive power to issue warrants on said Motor Vehicle Fund in the months of February and August; the net proceeds after the said expenses have been paid are divided equally between the State and the Counties (R. 3, 4, 5).

Prior to the said Amendments of 1927 said subdivision (c) provided as follows:

> "For each said vehicle weighing when unladen, less than 3000 pounds. ——————————$10.00;"

Said Amendments went into force and effect on December 31, 1928, and the charges from subdivision (c) were increased about 250%.

Since the 31st of December, 1928, there are many thousands of motor vehicles transporting persons for hire or transporting property which only weigh when unladen less than 3000 pounds, but carry more than 6000 pounds, and the owners and operators thereof pay no charges under the present subdivision (c); said owners and operators are in direct competition with these plaintiffs and all persons, firms, associations and corporations who have and will in the future pay said exactions, as aforesaid, before they can use their vehicles for the transportation of persons for hire or transporting property; said defendants will enforce said law; said competition has already caused the plaintiffs and all others, as aforesaid, at least $200,000

in damage to or loss of business, and said plaintiffs and said others are being damaged daily; the plaintiffs and said others will never recover any of the said losses from said others and operators who have been granted said privileges and immunities under the provisions of said subdivision (c) (R. 5, 6).

Said subdivision (c) of Section 77, as amended, of the "California Vehicle Act" and the acts of the defendant Snook in enforcing said illegal subdivision (c), as aforesaid, are unconstitutional and void, being contrary to and in violation of the due process of law and the equal protection clauses of the Fourteenth Amendment, as well as the provisions of the Constitution of the State of California, especially Sections 11 and 21 of Article I, as said subdivision and said acts of said Snook grant privileges and immunities to some of the same class of persons while denying the same privileges and immunities to others of the same class; the plaintiffs and all others similarly interested or situated pray the protection of said Fourteenth Amendment and the Constitution of the State of California (R. 1-13).

The plaintiffs, as well as said others, are taxpayers in their respective cities and are compelled to pay taxes and assessments to construct and repair the streets of said cities, and are also the owners and operators using motor vehicles transporting persons for hire or property on said streets and must pay license fees in said cities before using said streets; the license fees vary from $5.00 to $250.00 per year according to the weight and capacity of the motor vehicle, depending upon the city; said cities are

entitled under the Constitution of the State to issue licenses, in order to obtain money for the cost of regulating said motor vehicles and also for revenue; the plaintiffs and said others will be compelled to pay in the future said license fees on their additional trucks, or their business will be irreparably damaged and they have already paid said fees on their motor vehicles which have been operated prior to this time.

Said cities have collected several millions of dollars from said license fees, to-wit, "tolls", and about 75% of the money so collected is used for construction and repair on the streets and the other 25% is used for regulation.

That 75% of the operation of motor vehicles is confined exclusively to the said streets of cities and the other 25% is on highways outside of the limits of said cities (R. 7).

The money collected under said subdivision (c), as aforesaid, is used exclusively for the reconstruction, maintenance or repair on State highways or on County roads, and no portion of said money is used to construct, reconstruct, repair or maintain said streets.

The said exactions of the said subdivision (c), as aforesaid, are not designed, as a measure of cost or value of the use of highways outside of the limits of cities, as said motor vehicles operating continually on said highways and the streets of cities pay the same flat charges.

The plaintiffs and all others allege that said subdivision (c) and the acts of the defendant Snook in enforcing said illegal subdivision (c) are unconstitutional and void, being contrary to and in violaton of the 14th Amendment of the

Federal Constitution, as well as the Constitution of the State of California, prohibiting the making or enforcement of any law which allowed double taxation or granting privileges and immunities to some in the same class or deprive any person of life, liberty or property without due process of law, or denies to any person the equal protection of laws, the protection of all of which, the said plaintiffs and all said others pray (R. 7, 8).

The plaintiffs and said others have paid more than $2,500,000 to said defendant Snook since December, 1928, or said Snook would have enforced the provisions of said subdivision (c) and other provisions of said "California Vehicle Act"; said plaintiffs and said others would have been fined or imprisoned, or both, as well as having their motor vehicles seized and sold; unless restrained said Snook will compel said plaintiffs and said others after this date to pay more than $100,000 additional under the provisions of the said subdivision (c); said Snook has already collected since December, 1928, about $5,200,000 from subdivision (a), $20,000 from subdivision (b), and $2,500,000 from subdivision (c) and $280,000 from manufacturers, owners and chauffeurs; during this year the defendant Snook will collect $2,000,000 additonal; only 25% of the amount so collected, as aforesaid, may be used for the cost of the regulation and enforcement of said "California Vehicle Act"; the amount collected from said subdivision (a), as aforesaid, will be more than twice the said cost of regulation and enforcement; and no portion of the money collected from subdivision (c), as aforesaid, will be expended for regulation; said money will be used

for reconstruction, construction, maintenance and repair on the highways without the limits of cities; said exactions found in said subdivision (c), as aforesaid, are compensation for the use of said highways outside of the limits of cities, to-wit, "tolls"; and are not based upon the police power, but for revenue; said flat charges, as aforesaid, must be paid in advance before said motor vehicles operate on the highways and the streets of said cities, and such charges cannot be divided, depending upon the future operation on the said highways in comparison with the operation on the streets.

The said subdivision (c), as aforesaid, and the acts of said defendant Snook in enforcing said illegal subdivision (c) are unconstitutional and void, being contrary to and in violation of the 14th Amendment of the Federal Constitution and the Constitution of the State of California, prohibiting the making or enforcement of any law which shall abridge the privileges or immunities of citizens, or deprive any person of life, liberty, or property without due process of law, or denies to any person the equal protection of the laws, the protection of all of which the said plaintiffs and all of said others pray (R. 8, 9).

The Congress of the United States on July 11th, 1916, enacted an Act entitled:

"An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes." Chap. 241, 39 Stat. at L. 355.

The State of California enacted a law, assenting to and agreeing to abide with the provisions of said Rural Post Roads Act, entitled: "An Act expressing assent of the

State of California to the provisions of the Act of Congress approved July 11, 1916, entitled 'An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes' ". Chap. 29, Laws of 1917.

Thereafter on November 9, 1921 Congress amended and supplemented said Act by the "Federal Highway Act", Chap. 119, 42 Stat. at L. 212.

That the Federal Government has since the year 1917 paid over to said State many millions of dollars under said Federal Acts for the construction and reconstruction of highways and in the future said Federal Government will pay additional millions to said State. That said Federal Aid has been expended on all State highways and on all county roads for construction or reconstruction. All State highways and all county roads are rural post roads and also come within the provisions of said Federal Acts; one of said provisions provided: "That all highways constructed or reconstructed under the provisions of this Act shall be free from tolls of all kinds."

The exactions under subdivision (c), as aforesaid, are "tolls", being charges for the use of said highways outside of the limits of cities, and no portion of such money so collected thereunder is used for the cost of regulation or enforcement of said "California Vehicle Act", and moreover no portion thereof is used for the construction, reconstruction, maintenance or repair of any street in said cities, as the streets of said cities are constructed, reconstructed, maintained and repaired by taxation, assessments or license fees to be paid by these plaintiffs, and all said

others, as aforesaid, for the use of said streets by their motor vehicles.

Said illegal subdivision (c), as aforesaid, and the acts of the defendant Snook in enforcing said illegal subdivision (c), as aforesaid, are unconstitutional and void, being contrary to and in violation of the said Federal Aid Legislation, so adopted by the State of California, the protection of all of which the plaintiffs and all of said others pray (R. 9, 10, 11).

The said defendant Snook must pay the money so collected to the State Treasurer, and no portion of said moneys so deposited in the "Motor Vehicle Fund" can be withdrawn, unless the defendant Riley should issue warrants, and said defendant Riley can only issue warrants in February and August; that the whole amount so collected by the defendant Snook from the proceeds of said subdivision (c), as aforesaid, is still in the "Motor Vehicle Fund", and unless this Honorable Court shall issue the interlocutory injunction prayed for herein restraining said defendant Riley, as aforesaid, said defendant Riley will draw warrants in August, 1929, on said "Motor Vehicle Fund", and thereupon said moneys so collected, as aforesaid, from said subdivision (c), as aforesaid, will be distributed, and in the event said subdivision (c), as aforesaid, and the acts of said defendant Snook in collecting said money will be declared unconstitutional and void by this Honorable Court, then such money will be lost to these plaintiffs and all of said others, and they will be irreparably damaged (R. 11).

The premises considered these plaintiffs and all persons, firms, associations and corporations similarly interested or situated have no plain, adequate and complete remedy at law (R. 11).

That the matters involved in this controversy exceed in value the sum of Three Thousand (3,000) Dollars, exclusive of interest and costs (R. 11).

The plaintiffs on behalf of themselves, as well as on behalf of all persons, firms, associations and corporations, similarly interested or situated pray that an interlocutory injunction be granted restraining and enjoining the defendant, Frank G. Snook, as Chief of Motor Vehicle Division, as aforesaid, from in any way or manner enforcing or threatening to enforce the said provisions of said subdivision (c) of said section 77, as amended, of the "California Vehicle Act", and further restraining and enjoining said defendant, Ray L. Riley, as State Controller of the State of California, from issuing any warrant or warrants against said "Motor Vehicle Fund" which would deplete that fund to such an extent that less than $2,500,000 remained therein which latter sum shall be subject to any order or orders of this Honorable Court in the premises; the plaintiffs pray that this Court proceed to call in two other judges, one of whom to be a Circuit Judge, for the purpose of hearing and determining the application for said interlocutory injunction as prayed for herein under the provisions of Section 266, as amended, of the Judicial Code; the plaintiffs pray upon the final hearing of this cause before said Court consisting of three judges for a decree declaring the said sub-division (c) of Section 77, as

amended, of the "California Vehicle Act", being Chapter 226, Statutes of 1923, as amended by Chapter 844, Statutes of 1927, is unconstitutional and the said defendant, Frank G. Snook, as Chief of Division of Motor Vehicles, be forever enjoined and permanently restrained from enforcing the illegal, void and unconstitutional subdivision (c) of said Sec. 77, as amended, as aforesaid; plaintiffs further pray that a decree be entered commanding and directing the said defendant, Snook, to immediately account for all moneys which he has collected from said illegal subdivision (c) of Section 77, as amended, as aforesaid, and after said amount is found, then the defendant, Riley, is commanded and directed to immediately issue a warrant for the said amount so found, including interest, on said motor vehicle fund and said money shall be paid over the registry of this Court, and in the event said amount so found is more than in said Motor Vehicle Fund, then a judgment for the difference is to be entered against said defendant, Snook, with interest; the plaintiffs pray for such allowances, distributions and payments as the Court may hereafter determine, award and decree, and for all other, proper and further relief as may be just and equitable in the premises, and for the costs and disbursements herein expended (R. 12, 13).

Order to show cause on said motion for an interlocutory injunction was filed on June 15th, 1929 (R. 13, 14, 15).

The defendants filed a motion to dismiss the Bill of Complaint on June 24th, 1929 (R. 15, 16).

On June 26th, 1929, the Statutory Court filed its decree denying the motion for an interlocutory injunction; and

granted the Motion to dismiss the Bill of Complaint and dismissed the cause (R. 17).

The plaintiffs appealed from said decree on July 1st, 1929 (R. 17, 18).

On the same date, July 21st, 1929, the Assignments of Error were filed (R. 18, 19).

Proper citation served and filed (R. 19).

The Statutory Court did not file any opinion, and at the hearing announced that this case has already been decided by its opinion and decree in the *Carley & Hamilton* case. The opinion is not reported and is found on pages 16, 17, 18 and 19 of the Record in the *Carley & Hamilton* case.

SPECIFICATION OF ERRORS.

I.

The Statutory Court erred in denying the application for an interlocutory injunction.

II.

The Statutory Court erred in granting the motion to dismiss the Bill of Complaint.

III.

The Statutory Court erred in dismissing the Bill of Complaint.

IV.

The Statutory Court err in dismissing the cause of action.

V.

The Statutory Court erred in deciding that subdivision (c) of Section 77 of the "California Vehicle Act", being Chapter 226, Statutes of 1923, as amended by Chapter 844, Statutes of 1927, is a police measure.

VI.

The Statutory Court erred in refusing to be bound by the meaning of said provisions of said subdivision (c), as aforesaid, as interpreted by the Supreme Court of California.

VII.

The Statutory Court erred in refusing to decide that the exactions under said subdivision (c), as aforesaid, were "tolls".

VIII.

The Statutory Court erred in deciding that said subdivision (c), as aforesaid, and the acts and the threatened acts of the defendants in enforcing said subdivision do not violate any provisions of the Constitution of the United States, but that the said subdivision and said acts are constitutional and legal.

IX.

The Statutory Court erred in refusing to decide that the appellants and many thousands of persons, firms, associations and corporations have been compelled to pay said exactions under the said subdivision (c) of the said Section 77, as amended in the year 1927, of said "California Vehicle Act", in order to use not only the Federal Aid Highways, but also the streets within the limits of

said cities, and now they are compelled to pay to said Appellee Snook said exactions before they can use said highways and streets, as aforesaid, by their additional motor vehicles, and are entitled to the protection of the 14th Amendment of the Federal Constitution, and the Constitution of the State of California, or their businesses will be irreparably damaged.

X.

The Statutory Court erred in refusing to decide that under the provisions of the State Constitution, as well as the state laws, the cities are empowered to charge license fees on all motor vehicles transporting persons for hire or transporting property before said motor vehicles can use said streets; said cities are now collecting from said appellants and all said others many millions of dollars annually, and 25% of said money is used for regulation and the balance, 75%, is expended in the maintenance and repair of their said streets; said exactions are "tolls"; in addition to said exactions the appellants and all said others, as taxpayers, pay taxes and assessments to construct the said streets, and to maintain and repair the same.

XI.

The Statutory Court erred in refusing to decide that under the provisions of the "California Vehicle Act" said subdivision (c) of Section 77, as amended in the year 1927, was not enacted under police power, but as a revenue measure in order to compel the appellants and certain of said others to pay said exactions in advance before they can operate their vehicles not only on the Federal Aided

Highways, but also on streets within the limits of said cities; all the money so collected has been and now is being expended exclusively for the construction, maintenance and repair of the Federal Aided Highways, even though 75% of said money so collected was a charge on said streets; said exactions under said subdivision (c), as aforesaid, are "tolls".

XII.

The Statutory Court erred in refusing to consider that many thousands of motor vehicles, transporting persons for hire or transporting property using both the Federal Aided Highways and said streets of said cities, are not required to pay said exactions under said subdivision (c), as aforesaid, as their motor vehicles weigh, unladen, less than 3000 pounds, even though the weight of vehicle and load would exceed 6000 pounds; said appellants and all persons, firms, associations and corporations similarly interested and situated have been and will be in direct competition in their businesses with the owners and operators so vested with said privileges, as aforesaid; said appellants and said others have been irreparably damaged by such competition, and they will suffer said irreparable damage daily in their businesses; said subdivision (c), of said Section 77, as amended, as aforesaid, is unconstitutional, being contrary to and in violation of the due process of law and equal protection clauses of the 14th Amendment of the Federal Constitution, as well as the State Constitution.

XIII.

The Statutory Court erred in refusing to consider that the appellants and said others similarly interested or situated have been and will be compelled to pay in advance said exactions under said subdivision (c), as aforesaid, before they can use their motor vehicles for the transportation of persons for hire or for the transportation of property; 75% of the money so collected by said appellee Snook is derived from said exactions for the use of said streets of said cities, as aforesaid; every dollar so collected, as aforesaid, is expended on the construction of Federal Aided Highways and their maintenance and repair; said exactions, payable in advance, cannot be divided; said subdivision (c), as aforesaid, is unconstitutional, as said exactions are arbitrary and unreasonable, and impose double taxation, being contrary to and in violation of the said 14th Amendment, especially the due process of law and the equal protection clause thereof, as well as the Constitution of the State of California.

XIV.

The Statutory Court erred in refusing to consider that the State entered into a contract with the Federal Government by the terms of which said State agreed to abide by all the provisions of the Federal Highway Legislation; said appellants and said others are taxpayers, owners and operators of motor vehicles and are entitled to receive all the privileges and benefits of said Federal legislation.

XV.

The Statutory Court erred in refusing to decide that said subdivision (c) of said Section 77, as amended, of the "California Vehicle Act", is unconstitutional, being contrary to and in violation of said contract entered into by said State, and the provisions of said Federal Aid Legislation, as said exactions, as aforesaid, are "tolls"; all highways in the State outside the limits of cities are protected against the charge of "tolls", and further said exactions, as aforesaid, are collected in advance and cannot be divided.

XVI.

The Statutory Court erred in refusing to decide that the said acts and threatened acts of said appellee Snook in enforcing the provisions of said subdivision (c), as aforesaid are unconstitutional and void, as said subdivision (c), as aforesaid, is unconstitutional.

XVII.

The Statutory Court erred in refusing to decide that the acts and threatened acts of said appellee Riley, in enforcing the provisions of said "California Vehicle Act" by distributing the money so collected by said appellee Snook, have been and will be unconstitutional and void, as said subdivision (c), as aforesaid, is unconstitutional.

XVIII.

The Statutory Court erred in refusing to decide that the appellants and all persons, firms, associations and corporations similarly interested or situated are entitled to

all of the relief prayed for in the bill of complaint against said appellees Snook and Riley.

ARGUMENT.

On October 28, 1929, this Honorable Court granted the motion to consolidate the case of *Cottingham, et al. v. Snook, et al.*, No. 267, October Term, 1929, with the case of *Carley & Hamilton, Inc., et al. v. Snook*, No. 86, for hearing as one case, and the appellants can adopt the brief of the appellants in said No. 86, as their own, and with permission to file an additional brief on the questions which were not within the issues in said case No. 86.

I.

THE APPELLANTS INSTITUTED THE ACTION ON BEHALF OF THEMSELVES AND ON BEHALF OF OTHERS SIMILARLY INTERESTED OR SITUATED. A CLASS SUIT.

The appellants in the instant case adopt the argument and citations in Paragraph I in the brief of the *Carley & Hamilton* case, p. 20, with the additional fact that the appellants operate on both the Federal aided highways and the streets of cities.

II.

THE CHARGES TO BE COLLECTED IN ADVANCE BY THE APPELLEE UNDER THE PROVISIONS OF SUBDIVISION (c) OF SECTION 77 OF THE "CALIFORNIA VEHICLE ACT", AS AMENDED, ARE "TOLLS".

The appellants in the instant case adopt the argument and citations in Paragraph II in the brief of the *Carley & Hamilton* case, p. 20.

III.

THE SAID SUBDIVISION (c) OF SAID SECTION 77 OF THE "CALIFORNIA VEHICLE ACT", AS AMENDED, IS A REVENUE MEASURE AND WAS NOT ENACTED AS A POLICE MEASURE.

The appellants in the instant case adopt the argument and citations in Paragraph III in the brief of the *Carley & Hamilton* case, p. 31.

IV.

ALL CITIES ARE EMPOWERED BY THE STATE CONSTITUTION AND HAVE ENACTED LICENSE ORDINANCES COMPELLING OWNERS OR OPERATORS OF MOTOR VEHICLES USED IN TRANSPORTING PASSENGERS FOR HIRE OR PROPERTY TO PAY IN ADVANCE LICENSE FEES BEFORE USING THE STREETS THEREOF. THE CHARGES ARE "TOLLS".

The appellants in the instant case adopt the argument and citations in Paragraph IV in the brief of the *Carley & Hamilton* case, p. 36.

V.

THE SAID SUBDIVISION (c) OF SECTION 77 OF SAID "CALIFORNIA VEHICLE ACT", AS AMENDED, COMPELLING THE APPELLANTS AND ALL PERSONS, FIRMS, ASSOCIATIONS AND CORPORATIONS SIMILARLY INTERESTED OR SITUATED TO PAY SAID CHARGES ARE UNCONSTITUTIONAL AND VOID, BEING CONTRARY TO AND IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION.

The appellants in the instant case adopt the argument and citations in Paragraph V in the brief, in the *Carley & Hamilton, Inc.* case, p. 38.

In the *Carley & Hamilton* case the plaintiffs (now appellants) were the owners and operators of motor vehicles transporting persons for hire or property exclusively on the streets of cities, while in the instant case the plaintiffs (now appellants) are the owners and operators of motor vehicles on the streets of the cities and also highways outside of said cities (R. 1, 2); 75% of the use of said motor vehicles is confined to the streets of cities, while 25% is confined to the highways outside of cities (R. 7); the money collected under said subdivision (c), as aforesaid, is used exclusively in the construction, reconstruction, maintenance or repair on the highways outside of cities, and no portion of said money is used to regulate, construct, reconstruct, maintain or repair the streets of cities; said exactions under said subdivision (c), as aforesaid, are not designed as the measure of the cost or value of the use of highways outside of the limits of said cities

(R. 5, 7); the appellants as well as said others, are tax payers in the respective cities and are compelled to pay taxes and assessments to construct and repair the said streets, and also to pay charges, to-wit, "tolls", as license fees, before they can use their motor vehicles; said cities are empowered to issue licenses in order to obtain money for the cost of regulation and for revenue; the appellants and said others have, and will pay annually many millions of dollars to said cities, as aforesaid, and 75% of the money so collected is used for reconstruction and repair on the streets and the other 25% is used for regulation (R. 7); prior to the amendments of 1927 every vehicle weighing when unladen less than 3000 pounds paid $10.00. Now the said appellants and said others pay 250% more; since December 31st, 1928, when such amendment went into effect, many thousands of motor vehicles are transporting passengers for hire or property weighing when unladen less than 3000 pounds, and the owners thereof pay no charges under the present subdivision (c), but are in direct competition with appellants and all said others, who have to and will in the future pay said charges before they can use their motor vehicles, or the defendant Snook will enforce said law by fines or imprisonment, or both, or by seizing their motor vehicles; said competition has already cost the appellants and said others at least $200,000 in damage to or loss of business, and every day said appellants and said others are being so damaged, as aforesaid, and they cannot recover any of said damages from said others, who have been granted under the provisions of said subdivision (c), as amended, said privileges and immunities (R. 5, 6, 8); the appellants were not able to

obtain any information from said Snook, at the time of the institution of this action, on June 15th, 1929, and they alleged that Snook has collected more than $2,500,000 from said exactions under subdivision (c), and that said plaintiffs and said others will pay more than $100,000 additional since said June 15th, 1929, and since December 31st, 1928, the defendant Snook has collected $8,000,000; that said $8,000,000 was collected about in this proportion: $5,200,000 from subdivision (a), $20,000.00 from subdivision (b), $2,500,000 from subdivision (c), and the balance, $280,000, from manufacturers and owners and chauffeurs, and defendant Snook will collect more than $2,000,000 additional; only 25% of the amount so collected can be used for the regulation and enforcement of said act and the amount collected from said subdivision (a), as aforesaid, will be more than twice the said cost of regulation and enforcement, and no portion of the money so collected from subdivision (c), as aforesaid, will be used for said regulations and enforcements, and all said moneys will be used on the highways without the limits of the cities; said exactions found in said subdivision (c), as aforesaid, are "tolls", and are not based upon police power but for revenue; said exactions, as aforesaid, to be paid in advance, cannot be divided, depending upon the future operations on said highways in comparison with the said operation on the streets in said cities (R. 8, 9).

As is seen, the appellants and all others similarly interested or situated use their motor vehicles about 75% on the streets of cities and 25% on the highways outside said cities. The appellants and all others are compelled to pay the exactions under said subdivision (c) even if

they only use their motor vehicles once or twice a year on the highway outside of the cities; they do not operate on any route and between fixed termini. It cannot be said that the flat tax under said subdivision (c) "could hardly have been designed as a measure of the cost or value of the use of the highways", as was said in the opinion delivered by Mr. Justice Brandeis, and "it follows that on the record before us the exaction of the license fee cannot be sustained either as an inspection fee or as an excise tax for the use of the streets of the city".

(See *Sprout v. South Bend*, p. 39, in Carley & Hamilton brief.)

We call attention to this court that said exactions could not be called occupation taxes (pp. 41, 42 in brief of Carley & Hamilton on this question and citations therein).

Subdivision (c) is as follows:

> "The following registration fees in addition to the registration fee specified in subdivision (a) of this section shall be paid for the registration of vehicles, including trailers and semi-trailers designed, used or maintained primarily for the transportation of passengers for hire or for the transportation of property, according to the following table;" (R. 4).

Every motor vehicle can be sold and the new owner is entitled to keep the old plates, as the original registration is transferred (Sec. 45). The Union Ice Company, an appellant, is not a common carrier, but is engaged in the business of manufacturing ice and operates its trucks in order to carry its products. It cannot be said that said exactions under subdivision (c) are occupation taxes, being the doing of any particular business.

(See the citations in *Sprout v. South Bend*, supra.)

We have been able to get some information from the appellee Snook of his records, since the bringing of this action in June, 1929. On August 9th, 1929, according to a communication to Mr. Vizzard, one of the solicitors, said Snook collected under color of subdivision (c) since December 31st, 1928 the following money, to-wit:

> "The amount collected from pneumatic tired trucks for the first six months of this year is $1,312,495.25; from solid tired trucks $1,468,539.50 and from trailers $308,686.90." (A total of $3,089,721.65.)

On October 22nd, 1929, Mr. Vizzard received the following information from appellee Snook:

> "In answer to your question as to the number of vehicles which were registered under the truck column last year and this year registered as automobiles, the number from January 1st to September 30th is 130,125 vehicles."

In other words these 130,125 vehicles paid weight fees under subdivision (c) in 1928, but pay no such fees whatsoever in 1929.

We have endeavored to receive information from appellee Snook as to the number of motor vehicles, trailers and semi-trailers registered under subdivision (c) in 1929. On November 9th, 1929, we were informed that he had no such information at this time, but we will receive it at some time in the future.

In the brief of Carley & Hamilton on p. 33, it is shown that appellee Snook collected from subdivisions (b) and (c) $2,668,000 during the year 1928 when all motor vehicles, trailers, and semi-trailers paid depending upon

their weights. Since December 31st, 1928, only about 150,000 motor vehicles, trailers and semi-trailers have paid in six months more than $3,000,000 under said subdivision (c), while 130,125 vehicles, trailers and semi-trailers do not pay a cent just because they weigh less than 3000 pounds unladen.

We submit that said subdivision, as aforesaid, is unconstitutional and the appellants and said others are entitled to the protection of the 14th Amendment prohibiting the making or enforcement of any law which shall abridge the privileges or immunities of citizens, or which deprive any person of life, liberty or property without due process of law, or denies to any person the equal protection of the law.

VI.

THE SAID PROVISIONS OF SAID SUBDIVISION (c) OF SAID SECTION 77 OF THE "CALIFORNIA VEHICLE ACT" ARE CONTRARY TO AND IN VIOLATION OF THE CONSTITUTION OF CALIFORNIA.

The appellants in the instant case adopt the argument and citations in Paragraph VI, in the brief of the *Carley & Hamilton* case, p. 51, together with the admitted facts found in Paragraph V of the brief herein.

VII.

THE MEANING OF THE TERM "FREE FROM TOLLS" HAS BEEN DETERMINED BY JUDICIAL DECISIONS AND ACTS OF CONGRESS BEFORE THE ENACTMENT OF THE RURAL POST ROAD ACT OF 1916.

We cite the following decisions of the Supreme Court and Acts of Congress which had fixed and determined the meaning of the term "Free from Tolls".

Congress granted public lands to the states in aiding the construction of railroads on the condition that such railroads were "Public highways for the use of the government, free from all tolls or other charge for transportation of its property or troops". The question presented to this court for consideration was whether or not such condition "free from all tolls or other charges for transportation of its property or troops" includes the free use of the road alone, or transportation also. Mr. Justice Bradley, in delivering the opinion of the court, said:

> "In view of the legislative history and the practice referred to, it seems impossible to resist the conclusion, when we meet with a legislative declaration to the effect that a particular railroad shall be a pubic highway, that the meaning is, that it shall be open to the use of the public with their own vehicles; and when Congress when granting lands in aid of such a road, declared that the same shall be and remain a public highway for the use of the Government of the United States, it only means that the Government shall have the right to use the road, but not that it shall have the right to require its transportation to be performed by the railroad company. And when this right of the use of the road is granted 'free from all toll or other charge for transportation of any property or troops',

it only means that the Government shall not be subject to any toll for such use of the road."

In the opinion, the court cites a number of Acts of Congress in which the same provisions regarding toll was expressed, and all of such provisions provided for the free use of such highways for the transportation of property or troops free from all toll or other charge.

Lake Superior etc. R. R. Co. v. United States, 3 Otto. 442, 23 L. ed. 965, 970.

Congress in the early days commenced to construct a highway from Washington, D. C. to the Mississippi River under the provisions of Article 1, Section 8, of the Constitution. This Cumberland Highway had been constructed in Maryland, Pennsylvania, Ohio and in Indiana, and said highway was under the supervision of the Government without "tolls". Afterwards Congress entered into contracts with Maryland, Pennsylvania, Ohio and Indiana; said states by legislative acts took over the respective portions of said highway in said states and did assent that said states would never charge a toll against the United States for the use of their portions of the said Cumberland Highway. The states of Maryland, Pennsylvania and Ohio repudiated such contracts.

In Maryland, Achison defended against an act of the state to impose a toll upon all passengers upon mail coaches, and, if such toll is not paid, a toll of one dollar on each coach was charged whenever such coach passed over the road. The court declared such toll was inconsistent with the compact between Maryland and Congress.

Achison v. Huddleson, 12 How. 294, 13 L. ed. 993.

In Pennsylvania, an action was brought and the Supreme Court interpreted the provisions of the laws of Maryland, Pennsylvania and Ohio, relating to the Cumberland road and the Acts of Congress transferring said road to the respective states. In the opinion of the court delivered by Mr. Chief Justice Taney, it is said:

"Now, as this was well known to the parties, can it be supposed that when Pennsylvania, by her Act of 1831, proposed to take the road, and keep it in repair from the tolls collected upon it, and exempted from the toll carriages laden with the property of the United States, she yet intended to charge it upon the mails? That in return for the large expenditures she required to be made, before she would receive the road, she confined her exemption to matters of no importance, and reserved the right to tax all that was of real value? And when Congress assented to the proposition, and incurred such heavy expenses for repairs, did they mean to leave their mails through Maryland and Pennsylvania still liable to the toll out of which the road was to be kept in repair? Upon this point the Act of Congress of March 3rd, 1835, is entitled to great consideration. For it was under this law that the States finally took possession of the road and proceeded to collect the toll. By so doing they assented to all the provisions contained in this Act of Congress; and one of them is an express condition that the United States should not thereafter be subject to any expense in relation to the road. Yet under the argument, the expenses of the road are to be defrayed out of the tolls collected upon it. And if the mails in Pennsylvania and Maryland may be charged, it will be found that instead of the entire exception, for which the United States so expressly stipulated, and to which Pennsylvania agreed, a very large proportion of the expenses of repair will be annually thrown upon them. We do not think that either party could have intended, when the contract was made, to

burden the United States in this indirect way for the cost of repairs. So far as the general government is concerned, it might as well be paid directly from the treasury. For nobody, we suppose, will doubt that this toll, although in form it is paid by the contractors, is in fact paid by the Post Office Department * * *.

"In either case it is not free from expense in relation to the road, according to the compact upon which it was surrendered to and accepted by the States."

In such case the act of Pennsylvania charging and collecting certain tolls were held void.

Searight v. Stokes et al., 3 How. 151, 168, 11 L. ed. 537, 645.

The State of Ohio endeavored by subsequent legislation to charge tolls on passengers on mail coaches. This court held such law of Ohio was void, being in contravention of the Acts of Congress and the State of Ohio relating to the surrender and acceptance of the Cumberland road.

Neil, Moore & Co. v. Ohio, 3 How. 721, 11 L. ed. 800.

In Oregon the Federal Government has donated thousands of acres of land for the sole purpose of having a post-road from the Pacific Ocean to the Idaho line, with the only restriction, freedom from tolls in connection with mails and the movement of troops; yet after the government had lost its title to its public lands in the state, it found no post roads and no benefits were derived from such land grant.

U. S. v. California & Oregon Land Co., 148 U. S. 31, 37 L. ed. 354;

U. S. v. Dalles Military Road Co., 140 U. S. 599, 35 L. ed. 561.

The Federal Government has enacted many acts dealing with the impositions of tolls on navigable waters, public highways. Act of May 23, 1828, Ch. 75, 4 Stat. L. 290, provided that certain rivers within the State of Alabama,

> "shall be forever free from tolls for all property belonging to the United States, and for all persons in their service, and for all citizens of the United States, except as to such tolls as may be allowed by act of Congress."

Act of June 23, 1836, Ch. 119, 5 Stat. L. 57, provided that the United States assented to Legislature of the State of Alabama imposing a toll on the use of certain portions of the canals which have been or may be constructed at or around Muscle and Colbert's Shoals of the River of Tennessee.

> "Such tolls shall be expended exclusively on the canals, and shall not exceed in amount the sum required to keep them in repair, and to defray the expenses, etc. * * *."
>
> "This section shall not effect the exemption of the property of the United States, and all persons in their service, from any toll whatever. An annual report shall be made to the Secretary of the Treasury of the United States, of the rate and amount of tolls charged or collected on said canal, and their application."

The property of the United States, and all persons in its service should be free of tolls. Act of August 8, 1846, Ch. 103, 93 Stat., L. 73; Act of Jan. 20, 1870, Ch. 7, 16, Stat., L. 61. By such acts it was provided that

> "the Des Moines River shall forever remain free from any toll, or other charge whatever, for any property of

the United States, or persons in their service, passing along the same."

Act of June 23, 1866, Ch. 138, 14 Stat. L. 73; Act of March 2, 1867, Ch. 144., 14 Stat. L. 421. Such Acts declare:

> "The passage of vessels to and from the Harbor of Michigan City, in Indiana, shall be free and not subject to toll or charge."

Act of July 7, 1870, Ch. 210, 16 Stat. L. 190. Such Act provided for tolls and revenue derived from improvements in the Wisconsin River and between such river and Fox River, for the purpose of paying and "current expenses of operating and keeping the same in repair, shall be paid into the treasury"; also as soon as the United States has been reimbursed such tolls shall be reduced to the least sum so as to operate and keep the improvement in repair. Thereafter by the Act of July 5, 1884, Ch. 229, Sec. 4, all tolls were abolished.

In August 1852, Congress enacted an act aiding the construction of a canal and lock in the St. Marie's River (10 Stat. L. 35, Ch. 92). Government granted to the State of Michigan 750,000 acres of land for the purpose of constructing and completing said canal. Sec. 3 provides that such canal should be a public highway for the use of the Government of the United States,

> "free from toll or other charges upon the vessels of said Government engaged in the public service, or upon vessels employed by the said Government in the transportation of any property or troops of the United States."

Section 5 provided that "for the use of said canal only such tolls as shall be sufficient to pay all necessary expenses for the cars, charge and repairs of the same", can be exacted.

The State of Michigan in 1852 enacted a law and adopted all the conditions expressed in said federal act.

The Federal Government took over such canal and demanded an accounting from the state of certain properties, including about sixty-eight thousand dollars which the state had collected as tolls and had on hand. Mr. Justice Peckham, in delivering the opinion of the court, said:

> "Evidently, it was not supposed that the State was to profit from this grant further than such profit as might arise indirectly from the completion and operation of the canal.
>
> Defendant refers to certain grants of land made in Illinois, Indiana, and Ohio, and perhaps to some of the other States, where such grants were made to aid in the construction of canals in those States, and where possible profits from the construction of such canals were within the contemplation of the various grants. But in the Acts referred to there are no restrictions upon the tolls which the State may charge for the use of their respective canals, the only limitation imposed being that the Government should have their free use for the passing of its vessels; while, in this Act, the toll which the State may charge are to be only such after the payment for its construction, etc., as should be sufficient to pay the necessary expenses for the care, charge and the repairs thereto."
>
> * * *
>
> "There was no intention that the State would reap profit out of this grant by the Government, but the State was to profit from the construction of such

internal improvements wholly within the State by the completion and operation of such canal."

U. S. v. Michigan, 190 U. S. 379, 47 L. ed. 1103.

We submit that such term cannot be disregarded "the long established usage of legislative expression", and "without doing violence to language" (*Lake Superior etc. R. R. Co. v. U. S.*, supra).

VIII.

THE SAID PROVISIONS OF SUBDIVISION (c) OF SECTION 77 OF THE "CALIFORNIA VEHICLE ACT" ARE UNCONSTITUTIONAL, BEING CONTRARY TO AND IN VIOLATION OF THE FEDERAL AID LEGISLATION SO ADOPTED BY THE STATE OF CALIFORNIA.

The Supreme Court of Pennsylvania in an early case said:

> "The legal meaning of the word 'toll' is, and always has been well defined. It is a tribute or custom paid for passage; not for carriage—always something taken for a liberty or privilege, not for a service; and such is the common understanding of the word. Nobody supposes that tolls taken by a turnpike or canal company includes charges for transportation, or that they are anything more than an excise tax demanded and paid for the privilege of using the way. * * *
>
> Before 1833 transportation had been generally over common roads, turnpikes and canals. *The common and legislative minds were then familiar with what was called tolls. They understood by them, sums paid for the privilege of passage without more, and this whether due to a turnpike, a canal or a bridge company."* (Italics ours.)

Boyle v. P. & R. R. Co., 54 Pa. St. 310, 314.

In 1916 Congress was "familiar with what was called tolls" (see the arguments and citations in paragraphs II, III, IV, V and VI in the brief in the *Carley & Hamilton* case, and also in paragraph VII of this brief). Further Congress also had before it the following decisions:

Mr. Justice Bradley, in delivering the opinion, said:

> "This unlimited right of the State to charge or to authorize others to charge toll, freight or fare for transportation on its roads, canals and railroads, arises from the simple fact that they are its own works, or constructed under its authority, it gives them being, it has a right to exact compensation for their use. It has a discretion as to the amount of that compensation. That discretion is a legislative—sovereign discretion, and in its very nature is unrestricted and uncontrolled. The security of the public against any abuse of this discretion resides in the responsibility to the public of those who, for the time being, are officially invested in it. In this respect it is like all other legislative power when not controlled by specific constitutional provisions, and the court cannot presume that it will be exercised detrimentally." * * *
>
> *"Of course the question will be asked, and pertinently asked: Has the public no remedy against exorbitant fares freights exacted by state lines of transportation?"* * * *
>
> *"Whether in addition to this, Congress, under the power to establish post-roads,* * * * and thus to *counteract the apprehended impediments refererd to, is a question which has exercised the profoundest minds of the country. This power was formerly exercised in the construction of the Cumberland Road and other similar works."* (Italics ours.)

B. & O. R. R. Co. v. Maryland, 21 Wall. 456, 22 L. Ed. 678.

Again: Mr Justice Bradley delivering the opinion, said:

> "If the State laws furnish no remedy (in other words, if the charges are sanctioned by them), then as before stated, it is for Congress and not the United States Courts, to regulate the matter, and provide a proper remedy."

This was a charge against unreasonable wharfage by the city.

Ouachita, etc. Packet Co. v. Aiken, 221 U. S. 444, 30 L. ed. 976.

In delivering the opinion Mr. Chief Justice Taney said:

> "Such an unlimited power to levy contributions on the public, and one so inconsistent with the ordinary course of legislation upon that subject, and, we may add, so unjust and injurious to the public, ought not to be sustained in a court of justice, unless it is conferred in plain and express words. It should not be inferred where the slightest doubt could arise, and the words are capable of any other construction; and still less can it be inferred in a charter like this, where the toll granted upon goods and property of every kind is so carefully specified and fixed in the law, and the charter altogether silent in relation to passengers. The contrary inference would seem to be irresistible." * * *
>
> "It is very possible, indeed, if the improvement in steam navigation could have been foreseen, and the great increase in travel and intercourse it would produce, that the Legislatures of the States might in some form or other have allowed a toll with reference to passengers, as a compensation for the facilities afforded by the canal. But it is not the province of this Court to enlarge the powers of a corporation beyond the limitations of the charter, because circumstances have changed. Our province is to expound

the law as it stands, not to determine whether larger powers would not have been given if the Legislature had anticipated events which have since happened."

* * *

"The questions before us are of high importance to the community, and are emphatically questions between the rights of the public and the powers of the corporation. The privilege of making this canal, and of receiving tolls upon it, was granted by the States without any compensation to the public but the convenience it was expected to afford. The States, as well as the United States, have contributed to the expense of its construction. And the court is called upon to decide whether the States who chartered this company have authorized it to enact any amount of toll it may think proper from their own citizens, as well as others, for the privilege of passing over it; or may, if such be its interest or policy, refuse altogether the permission to pass."

Perrine v. Chesapeake & Del. Canal Co., 9 How. 172, 13 L. Ed. 92.

So Congress enacted on July 11th, 1916, an Act entitled:

"An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes."

Chap. 241, 39 Stat. at L. 355 (R. 9, 10).

By such Act, Congress was willing to aid a State if it pass a law assenting to and agreeing to abide with all the restrictions contained in the Federal Act. The said Act prevented any money to be expended on any street in any city having more than 2500 inhabitants (Congress knew that all streets in cities are improved, constructed, maintained and repaired by city taxes and assessments, and

also by license fees. (See brief of Carley & Hamilton, as well as our brief).) Again the following prohibition is found:

> "Provided that all roads constructed under the provisions of this Act shall be free from tolls of all kinds."

Congress has had a liberal education. Many millions of dollars had been spent on such education. Congress decided that the public, including these appellants and all others operating on the Federal Aided Highways, are to be protected and the States are no longer to reap a profit from the Federal aid money, which money was collected from said public.

As said by Justice Bradley in the opinion in *Ouachita* case, supra,

> "If the State laws furnish no remedy * * * it is for Congress and not the United States Courts, to regulate the matter and provide a proper remedy."

Congress did provide a proper remedy by enacting said prohibition.

The term "free from tolls of all kinds" protects every user on Federal Aided Highways in any State against tolls of any nature, or the term is meaningless.

As Mr. Justice Sutherland in delivering the opinion of this court, said:

> "The rule is one well established and frequently invoked, but it is, after all, a rule of construction, to be resorted to only as an aid to the ascertainment of the meaning of doubtful words and phrases, and not to control or limit their meaning contrary to the true

intent. It cannot be employed to render general words meaningless, since that would be to disregard the primary rules that effect should be given to every part of a statute, if legitimately possible, and that the words of a statute or other document are to be taken according to their natural meaning."

Mason v. U. S., 260 U. S. 545, 67 L. Ed. 396.

Any attempt to destroy or make meaningless any word contained in the term "free from tolls of all kinds" would do violence to the language employed therein and be in defiance of the settled line of judicial decisions and the Acts of Congress in which the said term had been interpreted, and upon which Congress inserted such term in said Federal aid legislation.

The State of California, with a full knowledge of this prohibition against "tolls of all kinds", did in 1917 enact a law assenting to and agreeing to abide by all of the provisions of the Rural Post Road Act, including the prohibition against tolls of all kinds, to-wit:

"An Act expressing assent of the State of California to the provisions of the Act of Congress approved July 11, 1916, entitled 'An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes'."

Chap. 29, Laws of 1917 (R. 10).

Congress enacted July 2nd, 1918, an act, to-wit:

"An Act making appropriations for the service of the Post Office Department for the fiscal year ending June Thirtieth, Nineteen Hundred and Nineteen, and for other purposes."

Sec. 7 of said Act provides that the Postmaster General shall "conduct experiments in the operation of motor vehicle truck routes in the vicinities of said cities of the United States as he may select", so as to promote the "conservation of food products and to facilitate the collection and delivery thereof from the producer to consumer, and the delivery of articles necessary in the production of such food products to the producers in the production of such food products to the producer". Congress appropriated $300,000 for such purpose.

Congress no doubt had before it the report of the Postmaster General and it enacted the "Federal Highway Act", to-wit:

> "An Act to amend the Act entitled 'An Act to provide that the United States shall and the States in the construction of rural post roads and for other purposes", approved July 11, 1916, as amended and supplemented, and for other purposes."
>
> Chap. 119, 42 Stat. at L. 212 (R. 10).

This "Federal Highway Act" broadened the scope of the Rural Post Road Act and made a comprehensive Act. In Section II the following terms are defined:

> "The term 'highway' includes rights of way, bridges, drainage structures, signs, guard rails, and protective structures in connection with highways, but shall not include any highway or street in a municipality having a population of two thousand five hundred or more as shown by the last available census, except that portion of any such highway or street along which within a distance of one mile the houses average more than two hundred feet apart."
>
> "The term 'construction' means the supervising, inspecting, actual building, and all expenses incidental

to the construction of a highway except locating, surveying, mapping, and costs of rights of way."

"The term 'reconstruction' means a widening or rebuilding of the highway or any portion thereof to make it a continuous road, and of sufficient width and strength to care adequately for traffic needs."

Sec. 6. "Highways which may receive Federal aid shall be divided into two classes, one of which shall be known as primary or interstate highways, and shall not exceed three-sevenths of the total mileage which may receive Federal aid, and the other which shall connect or correlate therewith and be known as secondary or intercounty highways, and shall consist of the remainder of the mileage which may receive Federal aid."

Sec. 9. "That all highways constructed or reconstructed under the provisions of this Act shall be free from tolls of all kinds."

Sec. 12. "That the construction and reconstruction of the highways or parts of highways under the provisions of this Act, * * *."

The Federal aid is not to be used in certain cities; every highway constructed or reconstructed, or any portion of same, is covered by the Act; the prohibition against tolls of any kind is broadened, as any Federal aided highway, or any portion thereof, is protected.

The State of California enacted the "California Vehicle Act", being Chap. 226, Stats. of 1923, and was amended by Chap. 844, Stats. of 1927. Section (c) of said Act, as amended, compels the appellants and said others to pay a "toll", not only for their operation on the Federal Aided Highways, but also on city streets.

It is admitted that the Federal Government has since the year 1917 paid over to said State many millions of

dollars under said Federal Acts for the construction or reconstruction of highways, both primary or interstate highways, and secondary or intercounty highways, and the Government will pay many millions of dollars more; said Federal aid has been and will be expended on all highways, including county highways; all state highways and all county roads or highways are rural post roads and also come within the provisions of said Federal Acts; all moneys collected from said subdivision (c) is used exclusively in the construction and maintenance of the State highways or county highways, and no portion is used for the construction, reconstruction, maintenance and repair of any streets in any cities as said streets are constructed, reconstructed, maintained and repaired by taxation, assessments, or license fees (R. 10); the appellants and all said others must pay in advance said exactions under the said subdivision (c) and said charges are flat no matter what percentage of the use of their motor vehicles is over the streets or the highways outside of cities, and it is admitted that 75% of their operation is on the streets of the cities (R. 7).

Mr. Justice Sutherland in delivering the opinion said:

> "If the act interferes with the exercise by the state of its full powers of taxation or has the effect of removing property from its reach which otherwise would be within it, that is a contingency which affords no ground for judicial relief. The act is a law of the United States made in pursuance of the Constitution and, therefore, the supreme law of the land, the constitution or laws of the states to the contrary notwithstanding. Whenever the constitutional powers of the federal government and those of the state come into conflict, the latter must yield."

Florida v. Mellon, 273 U. S. 12, 71 L. ed. 325.

The Federal Aid Legislation is an act of Congress and the State cannot offend the prohibition directly or indirectly or make any profit by the Federal money in the construction or reconstruction of the highways of the State.

The appellants and said others have paid the $3.00 on every motor vehicle, trailer and semi-trailer, and the amount of money collected under said subdivision (a) of said Section 77 will be more than $5,200,000 and the cost of the regulation is less than $2,000,000. The appellants and said others are not attacking the said subdivision (a), but do attack subdivision (c), under which about 150,000 motor vehicles, trailers, and semi-trailers have paid over $3,000,000 during the six months from December 31st, 1928. If the said provisions of said subdivision (c) is not a toll of any kind, then the State can raise the charges in subdivision (c) to any amount. On December 1st, 1928, the charges under subdivisions (c) were raised 250%, and the State can double said charges at the next session of the Legislature in 1931. Congress did not intend to permit the States to exact such charges for the use of motor vehicles on the Federal Aided Highways.

The said aided highways are internal improvements and the State cannot profit from the construction. The Cumberland Highway was constructed by the Government and the public did not pay any toll, even if the vehicles operated wholly within a State. Now the Federal government is aiding the States in the construction or reconstruction of all highways. We cannot see any

difference whether the Government owned the highways without toll or the highways are constructed or reconstructed by Federal aid as long as the State has assented to the prohibition regarding tolls of all kinds.

It is admitted by the motion to dismiss that every highway in the State, outside of the limits of cities, is protected under the Federal Aid Legislation.

The appellees will try to argue that there are some highways not covered by the Federal Aid Legislation, although they have admitted the allegations in the Bill of Complaint. It is not necessary to have an entire highway to be protected, but only a part of the same.

The exactions under subdivision (c) are not divided and the appellants and said others pay in advance and they are not able to find out what percentage of use.

The Supreme Court has had before it a case in point.

New Mexico enacted a law requiring a license fee of $50.00 a year, payable in advance charging the distributors of motor fuel for each and every distributing station in the State. This court held that such license fee was void and unconstitutional, being contrary to and in violation of the Commerce clause, as such license fee payable in advance could not be divided into interstate or intrastate business.

Askren v. Continental Oil Co., 252 U. S. 444, 64 L. Ed. 654;

Bowman v. Continental Oil Co., 256 U. S. 642, 65 L. Ed. 1139.

See also:

Barrett v. New York, 232 U. S. 30, 58 L. Ed. 483;
Leloupe v. Mobile, 127 U. S. 640, 32 L. Ed. 311;
Crutcher v. Kentucky, 141 U. S. 47, 35 L. Ed. 649;
Post Teleg.-Cable Co. v. Richmond, 249 U. S. 252, 63 L. Ed. 590.

The appellees argued that the small amount of the Federal Aid money was not sufficient to construct or reconstruct the highways, and therefore the provisions prohibiting tolls of all kinds could not apply as these exactions are not tolls.

This question has been decided by this court in the case of a land granted railway.

In delivering the opinion Mr. Justice Brandeis said:

"The obligation of a land aid railway to carry the mail at a price fixed by Congress is a charge upon the property. The public lands were granted to Michigan to aid the construction of certain railways upon certain conditions. The Legislature of Michigan could not dispose of the lands except in accordance with the terms of the grant. By the act of February 14, 1857, it accepted the grant and enacted legislation to give legal effect to the conditions of it. Section 4 of the Act is as follows:

'Said railroads shall be and forever remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States; and the United States mail shall be transported over said railroads, under the direction of the Post Office Department; at such price as Congress may by law direct, * * *'.

> The order of the Board of Control of May 1, 1873, directing the transfer of the land to the Port Huron and Lake Michigan Company, and the patent issued by the Governor, were founded upon the authority of Section 11 of this Act; and under date of May 30, 1873, the company accepted the lands with the burden they imposed. The railroad, whose owners and constructors accepted aid derived from these lands, became charged by operation of law with the burden of transporting the mails. The question whether that company would have accepted the land with its burden if it had foreseen the validity of the title of the western lands is wholly immaterial. The burden attached upon the acceptance of any aid whatsoever, no matter how disproportionate to the cost of constructing the portion so aided."
>
> *Grand Trunk Western Railway Co. v. United States,* 252 U. S. 112, 64 L. Ed. 484.

We submit that this court takes judicial notice of the fact that the States are assessing exorbitant charges for the use of such Federal Aided Highways, and in many of the States such return exceeds the return from taxation on the taxable property of the State. There seems to be no desire to reduce such fees, but the States are now increasing the gas taxes and the registration fees. We may see the same situation as was developed in the early history of this country, and highways abandoned after being constructed. Congress never intended to receive back one dollar from the millions and millions of dollars which have been and are now being appropriated for the benefit of the public. The Acts of Congress have shown, as set out in this brief, that it has been and is now its desire to do away with and abolish "tolls of all kinds" for the use of internal improvements. The States are acting in

the construction of such Federal Aided Highways as trustees for the public, and of the Federal Government, and the public are entitled to receive the benefits of the use of such Federal Aided Highways without paying to the States any charges for such use.

It is preposterous to claim that the State can reimburse themselves for their share in the construction of said Federal Aided Highways, and in such manner recover back not only their share, but also in the future to receive a profit on such construction. The Federal Government has already paid over to the State many millions of dollars which money has been used on Federal aided highways, and the Federal Government will never receive back one dollar from such expenditure, while the State is enjoying millions of dollars for the construction, maintenance and repair of said highways, all out of such exactions from the public. The State is receiving the benefits of such money out of the expenditures of such Federal Aid. Congress never intended that the State should make profit out of the moneys paid under such Federal Aid Legislation.

Said subdivision (c), as aforesaid, is unconstitutional, being contrary to and in violation of the said Federal Aid Legislation, so adopted by the State of California.

IX.

THE SAID ACTS AND THREATENED ACTS OF SAID APPELLEE SNOOK, IN ENFORCING SUBDIVISION (c), ARE ILLEGAL AND VOID, AS SAID SUBDIVISION IS UNCONSTITUTIONAL.

Said appellee Snook threatens to and will enforce the provisions of subdivision (c) by fines or imprisonment, or

both, as well as seizing and selling the motor vehicles of the appellants and others at any time said appellants and said others desire to put in operation additional vehicles. The appellants and said others have been and still are suffering daily irreparable loss and damage.

We refer to above paragraphs of our brief, in which the facts, arguments and citations are set out therein, showing our position.

X.

THE ACTS AND THREATENED ACTS OF APPELLEE RILEY, UNDER COLOR OF HIS OFFICE, IN DISTRIBUTING THE MONEYS COLLECTED UNDER SAID SUBDIVISION (c) ARE ILLEGAL AND VOID, AS SAID SUBDIVISION IS UNCONSTITUTIONAL.

The appellee Riley has the exclusive power to draw money from the "Motor Vehicle Fund", and said Riley had, at the commencement of this action all of the moneys collected under said subdivision (c) in said "Motor Vehicle Fund". The said subdivision (c) is unconstitutional and said appellee Riley must respond.

We refer to the above paragraphs of our brief, in which the facts, arguments and citations are set out therein, showing our position.

XI.

THE ACTS AND THREATENED ACTS OF SAID APPELLEES IN ENFORCING SAID UNCONSTITUTIONAL AND VOID SUBDIVISION (c) ARE ILLEGAL BEING CONTRARY TO AND IN VIOLATION TO THE CONSTITUTION OF THE UNITED STATES, ESPECIALLY THE FOURTEENTH AMENDMENT THEREOF, AND ALSO THE CONSTITUTION OF CALIFORNIA.

We refer to the paragraphs of our brief in which the facts, arguments and citations are set out therein showing our position.

XII.

THE APPELLANTS AND ALL OTHERS SIMILARLY INTERESTED OR SITUATED ARE ENTITTLED TO A PERMANENT INJUNCTION AGAINST THE ENFORCEMENT OF THE PROVISIONS OF SUBDIVISION (c) AND FOR PROPER RELIEF IN THE PREMISES.

We refer to the paragraphs of our brief in which the facts, arguments and citations are set out therein showing our position.

We submit that the appellants and all others similarly interested or situated are entitled to all the relief prayed for in the bill of complaint.

W. R. Crawford,
J. F. Vizzard,
Henry G. Hotchkiss,
Solicitors for Appellants.